



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/142645

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on September 05, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's Child Care benefits were correctly discontinued because the father of Petitioner's children was in the home and not engaged in an approved activity for Wisconsin Shares Child Care purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Belinda Bridges and Mary Hartung
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was sent a Notice of Decision dated July 23, 2012 that informed Petitioner that her child care was to be discontinued effective August 31, 2012. The reason for the discontinuance was the inclusion of the father (JLW) of Petitioner's children in the home and he was not engaged in an approved activity for the Wisconsin Share Child Care Program.
3. On July 28, 2011 online application JLW listed his address as [REDACTED] Ave., Glendale, WI. The same address was noted on a June 25, 2012 online submission by JLW. Ex #s 3 and 4.
4. The landlord for the [REDACTED] address informed the agency that Petitioner lives at that address. See Ex # 7.
5. A six month report form was sent to Petitioner at the [REDACTED] address on or about May 21, 2012. Petitioner returned it to the agency indicating that the [REDACTED] address was her address. Ex # 10.
6. Petitioner submitted an address change on July 27, 2012 that indicated that her address was [REDACTED] Ave. On that same day she submitted a second address change indicating that her address was [REDACTED] Ave. address and that the previous address change indicating [REDACTED] should be ignored. Ex. # 11.
7. JLW signed a recall petition on November 28, 2012 as did Petitioner and noted their respective addresses to be [REDACTED] Ave. Ex #14.
8. A June 2, 2012 traffic citation issued to JLW lists his address as [REDACTED] Ave. Ex # 15. This is also the address on his driver's license issued in September 2011. Ex. # 8.
9. A consumer credit bureau reports list JLW's address as [REDACTED] Ex. # 9.
10. The [REDACTED] address is the home of Petitioner's grandmother.

DISCUSSION

Wis. Stat. § 49.155 authorizes the department to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. *Wis. Stat. § 49.155(1m)*. As such, W-2 child care assistance is a type of Wisconsin Works benefits. The department has a *Wisconsin Shares Child Care Assistance Manual (hereinafter Manual)* that provides the specific activities, policies and eligibility requirements to qualify for the program.

All parents, including non-marital co-parents, must be participating in an approved activity in order to receive child care assistance. *Wisconsin Shares Child Care Assistance Manual, §1.4.8*. If one parent is home while the other parent is working that parent is expected to watch the child(ren) and child care assistance is not available, that is to say, the childcare is only available for a two-parent household where work schedules overlapped. *Wisconsin Shares Child Care Assistance Manual, §1.4.8.2*.

At the hearing Petitioner indicated that JLW was now living at the [REDACTED] address and presented a notarized statement from her grandmother indicating that JLW was there as of August 1, 2012 and paying rent to her. Ex # 13. I note that this is the address for which Petitioner submitted an address change on July 27, 2012 indicating she had moved there and, on that same day, submitted another address change telling the agency to ignore the first address change.

The agency has submitted a significant amount of documentation, all of which indicates that both Petitioner and JLW were living together at the Mohawk address at the time of the agency decision to include JLW in Petitioner's household. I am, therefore, sustaining the agency decision to do so. Though Petitioner now contends that JLW lives with her grandmother this was subsequent to the agency action.

Petitioner and JLW are free to ask the agency to consider the contention that he has lives in the home of her grandmother. This might well require more proof than the statement from the grandmother.

Finally, Petitioner and JLW have indicated that JLW is disabled as the result of an accident. A person may be exempted from the approved activity requirement if disabled and unable to work and unable to care for children. This must, however, be verified by a physician:

1.4.8.2 Two-Parent Families and Three Generation Families and Participation in Approved Activities

In two-parent families both parents in the AG, including step parents and non-marital co-parents, must be participating in approved activities, unless one parent is participating in approved activities and the other parent is: 1) unable to participate in an approved activity due to a disability or health condition, and 2) is unable to care for the child (ren) so that the other parent could participate, due to a disability or health condition. The parent's inability to *both* care for their children and participate in approved activities must be verified by a doctor, psychiatrist, or psychologist.

Eligibility for child care is only for the overlapping hours when both parents are in approved activities.

This requirement also applies to three-generation families where all the minor parents and grandparents in the AG must be participating in approved activities.

[Examples omitted]

Wisconsin Shares Child Care Assistance Manual, §1.4.8.2.

CONCLUSIONS OF LAW

1. That the agency correctly included the father of Petitioner's children in her household.
2. That the agency correctly discontinued Petitioner's child care as the father of the children was not engaged in an approved activity nor has he established a medical exemption.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of November, 2012

/sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 19, 2012.

Milwaukee Enrollment Services
Child Care Benefits